

AUG 24 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE RICARDO RODRIGUEZ, JR.,

Defendant - Appellant.

No. 05-50593

D.C. No. CR-97-03443-2-BTM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted August 21, 2006^{**}

Before: GOODWIN, REINHARDT, and BEA, Circuit Judges.

Jose Ricardo Rodriguez, Jr. appeals from the 36-month sentence imposed upon revocation of his supervised release. We have jurisdiction under 28 U.S.C. § 1291. As Rodriguez failed to raise his contentions below, we review the district

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

court's judgment for plain error, *see Johnson v. United States*, 520 U.S. 461, 466-67 (1997), and we affirm.

Rodriguez challenges the district court's imposition of consecutive revocation sentences where the district court had initially imposed concurrent terms of supervised release. This contention is foreclosed by *United States v. Jackson*, 176 F.3d 1175, 1177-78 (9th Cir. 1999) (per curiam) (holding that the district court has discretion to impose consecutive sentences of imprisonment upon revocation of concurrent sentences of supervised release).

Rodriguez also contends that the revocation of his supervised release violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *United States v. Booker*, 543 U.S. 220 (2005). Specifically, he contends that the revocation procedure is unconstitutional because it allows for an additional term of imprisonment not authorized by the jury's verdict, and because it permits revocation based on judge-found facts established only by a preponderance of the evidence. Rodriguez's contentions are foreclosed. *See United States v. Huerta-Pimental*, 445 F.3d 1220, 1224-25 (9th Cir. 2006) (holding that the revocation of supervised release and resulting punishment is part of the original sentence and requires no impermissible judicial fact-finding, and that because revocation and the imposition of additional punishment are discretionary, neither violate *Booker* or the Sixth Amendment).

Because Rodriguez's contentions fail, we need not consider his remedy claims.

AFFIRMED.